1: Thurston & Rangachari E,G-4,5 (no date) 1909
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the Nīlgiris writes to me that "though the average Badaga is thrifty and hard-working, there is a tendency for him to be lazy when he is sure of his meal. When a person is sick in another village, his relatives make it an excuse to go and see him, and they have to be fed. When the first crop is raised, the idler pretends that 'worms' have crept into the crop, and the gods have to be propitiated, and there is a feast. Marriage or death, of course, draws a crowd to be fed or feasted. All this means extra expenditure, and a considerable drain on the slender income of the family. The Rowthan (Muhammadan merchant) from the Tamil country is near at hand to lend money, as he has carried his bazar to the very heart of the Badaga villages. First it is a bag of rāgi (food grain), a piece of cloth to throw on the coffin, or a few rupees worth of rice and curry-stuff doled out by the all-accommodating Rowthan at a price out of all proportion to the market rate, and at a rate ranging from six pies to two annas for the rupee. The ever impecunious Badaga has no means of extricating himself, with a slender income, which leaves no margin for redeeming debts. The bond is renewed every quarter or half year, and the debt grows by leaps and bounds, and consumes all his earthly goods, including lands. The advent of lawyers on the hills has made the Badagas a most litigious people, and they resort to the courts, which means expenditure of money, and neglect of agriculture." In the funeral song of the Badagas, which has been translated by Mr. Gover,* one of the crimes enumerated, for which atonement must be made, is that of preferring a complaint to the Sirkar (Government), and one of their numerous proverbs embodies the same idea. "If you

* Folk-songs of Southern India.

691 (538) prefer a complaint to a Magistrate, it is as if you had put poison into your adversary's food." But Mr. Grigg writes,* "either the terrors of the Sirkar are not what they were, or this precept is much disregarded, for the Court-house at Ootacamund is constantly thronged with Badagas, and they are now very much given to litigation."

782 I gather from the notes, which Bishop Whitehead has kindly placed at my disposal, that "when the Badagas wish to take a very solemn oath, they go to the temple of Māriamma at Sigūr, and, after bathing in the stream and putting on only one cloth, offer fruits, cocoanuts, etc., and kill a sheep or fowl. They put the head of the animal on the step of the shrine, and make a line on the ground just in front of it. The person who is taking the oath then walks from seven feet off in seven steps, putting one foot immediately in front of the other, up to the line, crosses it, goes inside the shrine, and puts out a lamp that is burning in front of the image. If the oath is true, the man will walk without any difficulty straight to the shrine. But, if the oath is not true, his eyes will be blinded, and he will not be able to walk straight to the shrine, or see the lamp. It is a common saying among Badagas, when a man tells lies, 'Will you go to Sigūr, and take an oath?' Oaths are taken in much the same way at the temple of Māriamma at Ootacamund. When a Hindu gives evidence in the Court at Ootacamund, he is often asked by the Judge whether he will take an oath at the Māriamma temple. If he agrees, he is sent off to the temple with a Court official. The party for whom he gives evidence supplies a goat or sheep, which is killed

* Manual of the Nilagiri district,

1: Thurston & Rangachari E,G-4,5 (no date) 1909
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585 Kota musicians, and bring therefrom water for cooking purposes in decorated new pots. The bride then salutes all her new relations, and they in turn give her their blessing. The ceremonial concludes with a feast, at the conclusion of which, in some cases, the bride and bridegroom sit on the raised verandah (pial), and receive presents.

181 "Though," a correspondent writes, "the Badaga is simple, and his wants are few, he cannot resist the temptation of wine and women. The Badaga woman 586 can change husbands as often as she pleases by a simple 587 system of divorce, and can also carry on with impunity (837) intimacy within the pale of her own community. It is not uncommon to find Badaga women changing husbands, so long as youth and vigour tempt them to do so, and confining themselves eventually to the last individual, after age and infirmity have made their mark, and render such frolics inexpedient." A former Magistrate of the 578 Nilgiris informs me that he tried more than one case, in •691 which a married man filed a complaint against another man for kidnapping or enticing away his wife for immoral purposes. The father of the woman was always charged as an abetter, and pleaded that, as no pariyam (bride price) had been paid by the husband, though he and the woman lived together as man and wife, no criminal offence could be proved against either the 595 father or the abductor. Polygamy is permitted, and the plurality of wives is a gain to the husband, as each wife becomes a bread-winner, and supports her children, and the man makes each wife superintend one depart- 587 ment of the day's work. Remarriage of widows is very common, and a widow may marry the brother of her 837 deceased husband. It is said to be etiquette among the Badagas that, when a woman's husband is away, she

2: Hockings E-4,5 (1962-1977) 1980
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692 complaint but the good repute of a man's village. Even recent cases of murder and suicide were handled entirely by the traditional Badaga council in the village where the acts were committed. That procedure contravenes Indian law, for any such criminal offences should automatically be reported to the police and then examined in a magistrate's court.[17] However, whether siding with the victim, the malefactor or neither, Badagas prefer to settle such matters through the headman and his council, thus protecting the village name from the dishonour of a police investigation and loose gossip. For the same reason they also try to stop a case from reaching the higher levels of their own traditional councils.

691 692 Despite this restrictiveness, it is now very common for a case which has already been judged by the village council to be taken to a lawcourt by whichever side has lost; hence we may characterize the present procedure as 'ambilegal'. There are two factors which may prevent the loser from appealing his case to a magistrate: one is the high cost of solicitors and of bribing various petty officials; the other is the common knowledge that the decision of the village council, though often not very impartial, can be used as evidence in court, whereupon in something like '98% of cases' (in the estimate of one experienced informant) the magistrate simply reiterates this decision.

Although he usually upholds the village council's decision, it is not in itself legally binding. Therefore while an appeal to the traditional councils is normally cheaper this is done less often now than before the Second World War. As disenchanted and westernized litigants turn to the magistrates more and more frequently the traditional hierarchy of councils is proportionately sapped of the power to enforce its decisions.

[128] A case taken from my notes may help illustrate how an individual can nowadays try to manipulate the two judicial systems to disadvantage an opponent.[18]

159 691 692 Two brothers, Kallan and Jo:gi, lived together with their wives and children as a joint family in a Me:kuna:du village and, as was the custom, also held joint ownership of their land, each farming as much of it as he wanted. In 1948, Jo:gi, the elder brother, died leaving his two young children and wife in the care of Kallan. One of these children was a daughter who would leave the family at marriage and would not be entitled, under

2: Hockings E-4,5 (1962-1977) 1980
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Badaga law, to any inheritance from her dead father. But Nandi, the dead man's son, would in time demand a half of the joint family's estate. Kallan knew this very well, for he could easily see how most joint families were breaking up into nuclear families; and he also recognized that with his wife, two sons and two daughters he would be making a much greater drain on the family resources than would Nandi and his mother. Kallan therefore decided soon after Jo:gi's death to secure title—under the Indian legal system—to much more than the half of the family land which he could justly claim when Nandi demanded its division, as he undoubtedly would in due course. Already arguments had arisen between Kallan and the widow over who should cultivate each part of the land.

Kallan realized that he could expect no support from his village council, for they would certainly take the just side of his victim, and Kallan himself was not wealthy or powerful enough to bribe them into doing otherwise. He therefore decided to get a legal agreement registered for transfer of land to himself without either the boy or his mother knowing about it. He mustered two men and one woman to act as witnesses, giving them handsome bribes for their services and secrecy. Two of them belonged to a different phratry than Kallan's, and all were unrelated to his family. At the land registrar's office in Coonoor, far from their village, the woman witness claimed that she was Jo:gi's widow, and that Kallan had loaned her some money against the security of about three-quarters of the land she had title to since her husband's death (i.e., on her son's behalf). The government official registered an agreement that if the sum of money supposedly lent her was not repaid within ten years the land would automatically become Kallan's property. The official did not investigate whether the woman really had any title or whether she was indeed Jo:gi's widow. As she could not write, she set her thumb-print to the document.

Kallan continued to let Jo:gi's real widow use the land she needed, hoping that she would die within the next ten years; and after eight years she did in fact pass away, presumably by natural causes. By this time her son Nandi had attained legal majority and soon found himself faced with the perennial problem of Badaga farmers, shortage of money. He went to the local co-operative society and obtained a loan of two thousand rupees against a pledge of two acres of what was assumed to be

2: Hockings E-4,5 (1962-1977) 1980
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his land. The co-operative society casually enquired if the land was encumbered, but as nobody suspected that it was the loan was granted.

That year Nandi's potato crop was ruined by disease, and he was unable to repay the loan within the stipulated time. The co-operative society thereupon made preparations to seize the two acres which Nandi had pledged; at which point Kallan decided to step in, as the land was covered by his spurious agreement. He even announced that he would sue the society in court for trying to seize land that legally belonged to him. This was the first time that Nandi and the village learned about the transfer agreement registered some twelve years earlier.

In revealing the existence of that document and telling Nandi that his mother had made the agreement while he was a small boy, Kallan failed to take note of one important fact: one of the men whom he had paid to act as false witness at the registration was now president of the co-operative society! This man, Madia, now did what seemed best for his society and—without mentioning his own role in the matter—tipped off Nandi about the falsity of Kallan's agreement. Madia advised the young man to take the case to the magistrate's court and charge Kallan with false representation. This would not be difficult, for the woman who had posed as Nandi's mother was still living, and her thumb-print could thus be checked with that on the document. Such a sophisticated method of proving the falsity of a document would be beyond the capabilities of the village council and would probably win scant support for Nandi's case there. (Undoubtedly Madia had his own reasons for not wanting the matter discussed in his village.) But unfortunately Nandi had no money to initiate a hearing in the magistrate's court. He did not take the matter to his own village council either, for he knew the council has little power left to enforce its decisions, and the likelihood was high that Kallan would be able to bribe its members.

Whether bribes were in fact given or not, the council did discuss the case some fifteen years ago and advised Nandi to repay the money his mother had supposedly borrowed from Kallan. This was their compromise solution, offering Kallan a financial inducement—the money which he had never really lent—and offering Nandi tenure of the two acres he had pledged and cancellation of Kallan's spurious agreement.

2: Hockings E-4,5 (1962-1977) 1980
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159 691 692

Kallan was apparently willing to accept this, for he was now urging Nandi to repay the supposed loan but under no circumstances to go to a lawcourt. Now it is up to Nandi to solve the problem, still at stalemate in 1975. The solution which he chooses must be couched in the current ambilegal idiom. If he attempts a solution purely in the traditional idiom or purely in the lawcourt idiom, without taking into account the alternate system and Kallan's possible manipulation of it, then Nandi's chances of ultimate success are slim.

The point which the case of Kallan and Nandi underlines is that the introduction of British procedural law in the nineteenth century did not simply offer Badagas an alternative or more effective approach for solving conflicts in their community. The procedure in a lawcourt must have seemed capricious to a villager: it operated on the assumption that all individuals were equal before the law and that the proceedings must work directly towards a just decision; whether a man was a Torea or a member of the gentry was irrelevant to how he would be treated; his past history and his family's reputation were similarly not taken into consideration. To Kallan and Nandi, therefore, as to many of their Badaga contemporaries, the lawcourt is less a mechanism for dispensing impartial justice than a possible means of revenge and a process for overcoming one's opponent (regardless of who may actually be in the right). The use of a lawcourt can involve an opponent in crippling legal costs, and the prospect of these costs may frighten him into compliance with what is wanted of him. Threatening to go to a lawcourt after receiving unfavourable treatment from the village council can also be used to undermine the authority of the elders and cast aspersions upon the village's respectability. For over a century Badagas have had a saying that runs: 'If you prefer a complaint to a magistrate, it is as if you had put poison into your adversary's food' (Metz, 1864, 92; Grigg, 1880, 224). The belief is still voiced today; but in the interim Badagas have learned how to apply the poison effectively.

691 692 518

POLITICAL CHOICE

646 For the past five decades Badagas have been elected to seats in the state legislature, and for the past three there have been Badaga Members of Parliament. In recent years (as an effect of earlier

692 nuisances under the Indian Penal Code (sections 277, 283, 290 and 510) and
671 the Madras Towns Nuisances Act, and generally any other offence under the Indian Penal Code or any special or local law which is punishable with fine only or with imprisonment for a term not exceeding six months or with both.

(681) The sentence which a panchayat court may pass is [a] fine not exceeding
(685) Rs. 15, except in cases of theft or mischief where the fine may extend to twice the value of the property stolen or the amount of damage caused. (Madras 1958: 50)

121 Since such a multiplicity of courts, officials, regulations and legal systems now faces a Badaga, how does he select where to go with a legal complaint? There are a number of factors that guide his handling of the problem.

692 The prime consideration is apparently not the seriousness of the complaint but the good repute of a man's own village. I know of several cases of murder and suicide which were handled entirely by the traditional Badaga council in the village where the acts were committed. This procedure contravenes Indian law, since any such criminal offences should automatically be reported to the police and if necessary be examined in a magistrate's court. (It is supposedly the headman's duty to decide whether a case should be placed before a magistrate.)

(632) 692 Badagas, on the other hand, whether siding with the victim, the malefactor, or
829 neither, prefer that all such matters be cleared up by the headman and his council without the village name being marred through a police investigation and loose gossip. For the same reason they also try to stop the case going on to the next higher level of council in their own traditional system.

• 691 Despite this state of affairs, it is very common for a case which has al-
692 ready been judged by the village council to be taken to a court of law by whichever side has lost; hence we characterize the present procedure as "ambi-legal". The practice has arisen because it is widely known that the decisions of a traditional village council are not legally binding and are often not very impartial either. On

691 692 the other hand there are two factors which militate against the loser going to a magistrate with his case: one is the cost of a solicitor and of bribing various petty officials; the other is the common knowledge that the previous decision of the village council can be brought forward as evidence in court, whereupon in something like "98% of cases" (in the estimate of one experienced informant) the magistrate will simply hand down exactly the same decision as the village council's.

An alternative route for appeal against a decision is the hierarchy of traditional councils. Although this is normally less expensive, it is being followed less often now than before the Second World War. As disenchanted litigants use the magistrate's court more and more frequently, the power of enforcing its decisions that rested with the traditional hierarchy of councils is proportionately sapped.

Badaga litigants, we have suggested, find themselves in what can be called an "ambi-legal" situation. A case taken from my field-notes may help illustrate how the individual may nowadays manage to manipulate the two judicial systems so as to disadvantage an opponent. (This case remains unsettled; all names are fictitious.)

159 685 691 (592) (423) "Two brothers, Kallan and Jogi, lived together with their wives and children as a joint family and, as was the custom, also held their land in joint ownership, but each farmed as much of it as he wanted to. In 1948 Kallan, the elder brother, died leaving his two young children and wife in the care of Jogi. One of these children was a daughter, who would leave the family at marriage and would not be entitled, under Badaga law, to any inheritance from her dead father. But Ranga, the dead man's son, would in time become a man and would then demand a half of the entire joint family's estate. Jogi knew this very well, for he could

159 685 691 easily see how all of the joint families are now in process of breaking up into nuclear families; and he also recognized that he, with a family of two sons and two daughters, would be making a much greater drain on the family resources than would Ranga and his widowed mother. Jogi therefore decided soon after Kallan's death that the time was ripe for him to secure legal title -- under the official legal system of India -- to much more of the family land than the half of it which he could justly claim when young Ranga demanded its division, as he undoubtedly would in due course. Already arguments had arisen between Jogi and the widow over who should cultivate each part of the land.

"To achieve his end, Jogi decided that he would need to get a legal agreement registered for transfer of land to himself without either the boy or his mother knowing about it; and he also decided that he could expect no support from the council in his village, since they would automatically take the just side of his victim, and Jogi himself was not wealthy or powerful enough to bribe them into doing otherwise.

"Jogi therefore mustered up three people to act as witnesses. One of them was an illiterate woman, and both she and one of the men were members of a different phratry than Jogi's. All three of these witnesses were quite unrelated to Jogi's family, and all received handsome bribes from him for their services and secrecy. The four of them went to the land registrar's office in Ootacamund, far from their village, and there an agreement was officially registered. The woman witness claimed that she was Kallan's widow, and that Jogi had loaned her some money against the security of about 75% of the land she had title to since her husband's death. The government official registered this agreement without investigating whether the woman really held any title or whether indeed she was actually

159 Kallan's widow at all; and the agreement stated that if the sum of money supposedly
685 lent her was not repaid within ten years, the land would automatically become
• 691 Jogi's property. As the woman who pretended to be Kallan's widow could not write, she set her thumb-print to the document.

"Jogi continued to let Kallan's real widow use the land she needed, without ever letting her suspect that any such document existed. He of course hoped that she she would die before the ten years expired; and after eight years she did in fact pass away, presumably (though not certainly) by natural causes. By this time her son Ranga had attained his legal majority, and soon found himself faced with the perennial problem of the Badaga farmer, shortage of money. He went to the local Cooperative Society and obtained a loan of Rs. 2000 against a pledge of two acres of what he assumed was his land. The Cooperative Society enquired if the land were "encumbered", i.e. already pledged, but nobody suspected that in fact it was and so the loan was granted.

"That year Ranga's potato crop was ruined by disease, and so he was unable to repay the loan within the stipulated time. The Cooperative Society thereupon made preparations to seize the two acres which Ranga had pledged; but Jogi decided it was time for him to step in, as the land was part of that included in
(692) his spurious agreement. To make the most of the situation, Jogi announced that he would sue the Society in court for trying to seize land that legally belonged to him and not to Ranga at all. This was the first time that the transfer agreement, registered some twelve years before, was heard about by Ranga and the village.

"In bringing the existence of that document into the open, and in telling Ranga that his own mother had made the arrangement while Ranga was a small boy, Jogi had failed to take note of one important fact: one of the men whom he

159 had paid to act as a false witness at the registration of the document was now
685 President of the Cooperative Society! This man, Madia, now did what seemed
691 best for his Cooperative Society, and -- without mentioning his own role in the matter -- he tipped off Ranga about the falsity of Jogi's agreement. Madia advised the young man to take the case to the magistrate's court and charge Jogi with false
159 representation. This would not be a difficult thing to do, as the woman who had
685 posed as Ranga's mother was still living, and it would therefore be possible to
691 check her thumb-print with that on the document. Such a sophisticated method of
692 proving the falsity of the document would be beyond the capabilities of the village council, and would probably win little support for Ranga's case there. (Presumably the President of the Cooperative Society had his own reasons for not wanting the matter discussed in his own village either!) But unfortunately Ranga had no money available at that time to initiate a hearing in the magistrate's court, and so there was nothing he could do. He did not take the matter to his own village council either, because he knew that today the council has little power to enforce its decisions; and the likelihood that Jogi would be able to bribe members of the council was too high to make this course of action palatable to Ranga.

"Whether bribes have in fact been given or not, though, the village coun-
159 cil has now discussed the case and is advising Ranga to repay the money his mother
695 supposedly borrowed from Jogi. They are thus trying to make a compromise of the situation, offering Jogi a financial inducement -- the money which he had never really lent -- and offering Ranga tenure of the two acres he has pledged and cancellation of Jogi's spurious agreement. Jogi for his part is apparently willing to accept this, for he is now urging Ranga to repay the amount of the supposed loan, and not under any circumstances to take the case to the magistrate's court. But it

159 is now up to Ranga to solve the problem."

695 The solution which Ranga chooses must be couched in the current ambi-

159 legal idiom. If he attempts a solution purely in the traditional idiom or purely in

692 the lawcourt idiom, without taking the alternate system and Jogi's possible manipulation of it into account, then Ranga's chances of ultimate success are slim.

177 The point which the case of Jogi and Ranga underlines is that the intro-

671 duction of British procedural law in the 19th Century did not simply offer the Bada-

692 gas an alternative approach for solving conflicts in their community. To any

829 Badaga the procedure in the lawcourt must have seemed capricious: it operated on the assumption that all individuals were equal before the law, and that the proceedings must work directly towards a just decision; whether a man was a Toreya or a member of the gentry was irrelevant to how he would be treated; his past history and his family's reputation were similarly not taken into consideration when the specific case came before the court. To Jogi and Ranga, therefore, as to many

578 691 692 of their Badaga contemporaries, the lawcourt is less of a mechanism for dispensing justice than a possible means of revenge and a process for overcoming one's opponent (regardless of who is actually in the right). The use of a lawcourt can involve an opponent in crippling legal costs, or the threat of these costs may frighten him into compliance with what is required of him. The threat of going to a lawcourt after one's case has received unfavorable treatment at the hands of the village council can also be used to undermine the authority of the elders on

578 691 that council and cast aspersions upon the honor of the village. For over a century the Badagas have had a saying that runs: "If you take a complaint to a Magistrate, it is as if you had put poison into your adversary's food" (Grigg 1880: 224). The belief is still voiced today; but in the interim Badagas have learned how to

578 691 place the poison effectively.

Changing Patterns of Marriage and Residence

177 615 582 The recent changes in the Nilgiris that we have described have left the phratry system of the Badagas relatively untouched. There have been several minor but interesting exceptions to this statement, however. During the present century a few Wodeyas, Kapakkas and Adikaris have arranged marriages with Lingayat girls from Mysore -- usually from Mysore City itself. Only with improved transportation and literacy have such marriages become possible; they reflect a move toward closer ties with orthodox Lingayatism in its Mysore home-land.

Since 1950 there have been occasional marriages between a Badaga Christian girl and a Gauda boy. Earlier in the century such unions would have been unthinkable; now they occur among "progressive" Badagas who have typically experienced a college education. The ancestry of the girl is still expected to trace back to the sib opposite to the boy's.

184 582 615 During the years since 1913 small minorities in nearly all of the Badaga phratries have contracted occasional marriages beyond the boundaries of the Badaga community. The important exception to this minority trend is the Toreya phratry. As we indicated earlier (pp. 67-68) some epidemic catastrophe early in this century produced a great imbalance in the size of the two Toreya sibs. One would expect the Toreyas, under these circumstances, to follow the lead set by [595] other Badagas and arrange marriages with families in Mysore. The Toreyas, however, are relatively conservative, and have chosen to weather out their crisis by allowing men of the smaller sib to practice polygyny whenever they can afford it.

178 583 If changing patterns of alliance have altered Badaga social structure very

177 information about occupations and attitudes in urban centers of Madras State, either through seeing films or through talking with friends or relatives who actually work in towns, whether as "professional" men or as clerks.

177 178 691 During the present century Badagas have made much use of the official magistrate's court, and have not relied entirely on their own traditional councils. Several kinds of cultural change have contributed to this shift in emphasis: many men now know Badaga advocates or legal clerks, bus transportation to the court is quick and easy, since men stopped plowing and employed laborers their work-load has been lighter, and the profits from commercial farming often permit the villagers to engage in costly litigation.

178 619 We have seen that, apart from a small number of marriages between Badagas and people in Mysore, Badaga social structure has altered very little during this century. The few Kanarese marriages have undoubtedly stretched the definition of where the boundaries of the various endogamous units should lie; but this has not so far resulted in a loss of Badaga "identity", or a strong trend toward more and easier marriage alliances with people in Mysore. Nevertheless, although these patterns of alliance have changed very little during the present century, there has been a profound impact from changing criteria in the arrangement of marriages. The demand for dowry as well as the traditional <u>bonnu</u> ("bride-price") has marked a significant change in the attitudes of the wealthier and -- in their own view -- more progressive families. The practice of paying dowry is easily traceable to the lowland Tamilian and Kanarese; the ability to pay it stems from the new-found wealth of some Badagas; the need to pay it points to new criteria of prestige and an increased concern with establishing a daughter as a worthy and permanent member of an affluent family well able to take care of her.

178 583 177